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V. COLONIAL QUESTIONS AT THE SAN FRANCISCO CONFERENCE

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No reference was made in the Dumbarton Oaks proposals to colonial questions, and this, the most important omission among the subjects covered in the Covenant of the League of Nations, brought forth immediate comment. There was, first of all, the problem of those territories held under mandate as part of the League of Nations system. They were all under the administration of members of the United Nations, except for the former German islands in the North Pacific, which were under mandate to Japan. If the new organization was to supplant the League, some formal changes would, in any case, be required.

A second problem was the disposition of such territories as had been taken from Italy and would be taken from Japan. If the self-denying ordinances of the Atlantic Charter and the Cairo Declaration were to be taken literally, there would be territories to dispose of which could hardly be turned into colonies.

Finally, the unfortunate experiences of many European states during the earlier years of the war in the Asiatic and Pacific territories under their control had caused a large amount of discussion of colonial questions. The belief had been voiced in various quarters that colonial administration needed modernizing, that self-government of the natives was not always their goal, and that colonial problems should be considered as international problems and not merely problems of individual colonial powers. Some of these powers looked upon the United States as the center of anti-colonial feeling, and even went so far as to suspect the United States Government of a desire to force changes on them. It was held by some groups in the United States that, as these colonies would be freed largely by American arms, the United States thereby would acquire some responsibility for their future. As the war situation improved and the colonial powers began to think about a peacetime future, they started to make tentative schemes for colonial reform which might avert any sort of outside intervention or internationalization. The British Colonial Development and Welfare Bill, the French proposal to unite all colonies in a "union" with the metropole, the Dutch proposal for a federalized state, all seemed related to the anti-imperial trend of the early days of the war.

When the Dumbarton Oaks conversations on international organiza-

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tion were held, the participating governments were not ready to discuss these colonial questions. It was understood, however, that they would be taken up later and would appear on the agenda of the conference of all the United Nations,¹ which later took place at San Francisco.

The Five Powers and Trusteeship. At Yalta, the three leading conferees agreed on certain basic proposals for an international system of trusteeship which was to apply to territories in three categories only: (1) territories held under mandate, (2) territories detached from enemy states as a result of World War II, and (3) territories voluntarily placed under the system by states responsible for their administration. No territories would come under the system automatically. After the system had been set up, an individual agreement would be concluded for each territory to be brought thereunder, and the terms for each agreement would in all probability be worked out separately. The Yalta Conference also decided that the four powers sponsoring the San Francisco Conference should, together with France, meet before the Conference to draw up specific proposals on trusteeship.

The preliminary conversations did not occur—or rather were held by representatives of the five powers after their arrival in San Francisco. At San Francisco, consequently, delegates of the five powers were engaged in two consultations—first, with their great-power colleagues, and also with representatives of all the other United Nations. This caused delay, but did not prevent the fullest and freest discussion of trusteeship in the Conference Committee; nor did it transfer the locus of final decision from the Committee. What it did mean was that in the work of this Committee the representatives of the five powers were actually an effective directing group—a rôle which they failed to maintain in some of the other committees.

The Organization of the Conference as Related to Trusteeship. The Conference assigned the discussion of a trusteeship system to Commission II, which dealt with the General Assembly, and created for it a special Committee under that Commission, Committee 4. As proposed by the Steering Committee, the chairmanship of Committee II/4 went to New Zealand and was taken by the head of its delegation, the Rt. Hon. Peter Fraser, prime minister of his country. The position of *rapporteur* was assigned to Luxembourg. Joseph Bech, foreign minister of that country, was at first designated to the post, but was obliged to return to Luxembourg in May, and his place was taken by Hughes Le Gallais, the minister of Luxembourg to the United States.

The Secretariat of the Committee, part of the international secretariat

¹ See the *Report to the President on the Results of the San Francisco Conference* . . . (Department of State Publication 2349), 1945, for a brief presentation of the background of the negotiations on trusteeship.

of the Conference, consisted of Eugene P. Chase, of the Division of Dependent Area Affairs of the Department of State, secretary; Harold Beeley, of the Research Department of the British Foreign Office, associate secretary; and three assistant secretaries: Miss Ruth Bacon, of the Near Eastern Office of the Department of State, Amry Vandenbosch, of the University of Kentucky (formerly of the Department of State), and William Yale, of the Office of Near Eastern Affairs of the Department of State.

Committee II/4 occupied a peculiar place in the work of the Conference. It dealt with a specialized problem, which was, for the most part, separate from the problems before the other Committees. In fact, this question of trusteeship commanded the very best attention of certain of the delegations. Until the very end, when the major political issues of the Conference were being fought out elsewhere, the Trusteeship Committee had a large and steady audience of delegates, advisers, and members of the Secretariat, and it met in the largest of the Committee rooms.

The representatives of most of the delegations on the Committee remained unchanging. The spokesman for the United States was invariably Commander Stassen, for Great Britain Lord Cranborne, and for the Soviet Union Mr. Novikov. Mr. Naggiar usually represented France, and Wellington Koo spoke for China. Australia's views were put forward by Dr. Evatt, and Mr. Smuts for South Africa, Dr. Goulimis for Greece, Badawi Pasha and Mr. Awad for Egypt, Al-Jamali for Iraq, Al-Khouri for Syria, and General Romulo and Mr. Kalaw for the Philippines were important and, on certain questions, constant speakers. Little was contributed by the Latin American nations, and a number of delegations, like that of Canada, while influential in other Committees, were silent in Committee II/4.

Documentation. The terms of reference for Committee II/4 were stated in the memorandum on the Organization of the Conference, adopted in plenary session, as follows: "To prepare and recommend to Commission II, and to Commission III as necessary,² draft provisions on principles and mechanism of a system of international trusteeship for such dependent territories as may by subsequent agreement be placed thereunder." Since there were no Dumbarton Oaks proposals on trusteeship, proposals for consideration by the Committee were made by various delegations, and the deadline for receiving them was fixed at May 11—more than two weeks after the Conference began—though the Committee did not refuse to receive proposals which came in later.

By May 11, the Committee had before it full-dress proposals offered by six national delegations: those of the four sponsoring powers, of France,

² No recommendations were in fact made to Commission III.

and of Australia. There were also incidental suggestions from a few other delegations. The Australian, French, and United States proposals were published as Conference documents on May 5, those of the United Kingdom on May 6, those of China on May 10, and on May 11 those of the Soviet Union, which were called "Amendments of the Soviet Delegation to the United States Draft on Trusteeship System." The proposals of the other sponsoring powers and France all followed the pattern set by the American paper. The Australian proposals were different in form and quite different in content, since they provided for stricter supervision by the United Nations and for the possibility of putting colonies under trusteeship without the consent of the metropolitan power.

The Working Paper. Eventually, on May 15, Commander Stassen presented formally to the Committee a Working Paper, in two Parts (A) and (B), which had been drawn up by the American delegation after consultation with other delegations (in particular, those of the other four great powers). This was accepted by the Committee, with the condition that there should be provision for discussion of additional Australian proposals which were expected, and which were formally put before the Committee on May 25 as a Proposed New Part (C). Debate on the Working Paper began on May 17 and continued until the final acceptance of the paper, greatly amended, on June 18.

The Charter Provisions on Trusteeship. The proposals approved by Committee II/4 and Commission II, after the Coördination Committee had revised them for form, appeared as three chapters of the Charter—a Declaration Regarding Non-Self-Governing Territories (Chap. XI) and two chapters on trusteeship, International Trusteeship System (XII), and Trusteeship Council (XIII).

I. THE DECLARATION REGARDING NON-SELF-GOVERNING TERRITORIES

In a sense, the trusteeship proposals were a modernization of the mandates system. The Declaration, on the other hand, was something distinctly new, being an outgrowth of innumerable liberal ideas on colonial administration and native welfare. It was confessedly objectionable to delegates of certain colonial powers and received the enthusiastic support of only a few. It was carried through the Committee partly by the feeling that the liberals deserved to get something, and partly by the pressure exercised by Australia, the United States, and China. Originally, the Declaration had been a part of the British trusteeship plan—largely a restatement and extension to all dependent territories of the provisions of the first paragraph of Art. 22 of the League Covenant. The Australian Delegation later submitted its paper called "Promotion of Welfare and Development," setting many standards to be lived up to and proposing many restrictions on colonial powers. This paper was typical of the more

radical policy of Australia and New Zealand in the Conference, and although it was too extreme for general acceptance, some of its important points went into the Declaration.

What eventually emerged in the Declaration was a statement of obligation assumed by such members of the United Nations as are responsible for the government of dependent territories. Revised and reworded again and again to meet political, literary, and historical objections, the Declaration cannot be paraphrased. The enacting part is the first paragraph (Art. 73):

"Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle, that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:"

This, it should be noted, is a statement by *each* of the members concerned that it recognizes a principle and accepts a responsibility.

The first item which needs comment is the *category* of territories affected: those "whose peoples have not yet attained a *full* measure of self-government." This is perhaps the most satisfactory definition of dependent peoples that has yet been found; the concept is easy to hold in the mind, though difficult to formulate in words. The *principle* that the people's interests are paramount represents the most enlightened thinking on the subject. The *obligation* to promote their well-being (accepted as a sacred trust in reminiscence of Covenant language) is serious and far-reaching, and the specific items which follow the first paragraph add rather than detract from the comprehensive nature of the Declaration.

It must be noted, however, that the Declaration is unilateral. For a time, the first paragraph ended with the words "they undertake:" These words, however, were revised at the insistence of the delegates of one sensitive colonial power who maintained that their government could never take part in a *joint* pledge or undertaking. They objected also to calling the Declaration a statement of policy. It is thus a unilateral declaration, made by each signatory on its own behalf. No specific sanction is provided, but appropriate references to the Declaration in discussions in the General Assembly may be expected, and the sanction of public opinion cannot be ignored. For the first time in history, moreover, such a Declaration has been embodied in a general world-wide treaty, so that its significance and implications cannot be considered of purely domestic interest to each declarant state.

The specific *undertakings* are effectively itemized. To ensure "the political, economic, social, and educational advancement" of the dependent

peoples, is straightforward and comprehensive, if general. It is interesting that delegates of certain member states with experience of recent rapid political advancement were those who pressed for the inclusion of the word "educational" as the basis of all native development, but also sponsored the proviso "with due respect for the culture of the peoples concerned." Reminiscent of the General Act of Berlin of 1885 and the Covenant of the League is the phrase "their protection against abuses."

"To develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement," is a statement which resulted from much argument. "Independence" was not mentioned as a goal, for the single reason that no colonial power except the United States looks upon it as a normal and natural outcome of colonial status—and it must be remembered that the Conference was a conference of governments and not of dependent peoples. Nevertheless, had not the controversy over the use of the word "independence" arisen, it would be clear that the language of the Declaration actually includes independence (or, as the precisionists would say, was patent of that interpretation) when it refers to "progressive development of their free political institutions." What is the meaning of the phrase "free political institutions" if it does not at least include potential independence?

In the repeated reference to "international peace and security" is a reminder that everything within the Charter must serve that primary end. Even the welfare of dependent peoples must be subject to the needs of international peace and of that security which (as one delegate said) must mean something more or less than peace. "To promote constructive measures of development, to encourage research, and to coöperate with one another" is language suggestive of the regional commissions which the Charter does not specifically mention, though the example of the Anglo-American Caribbean Commission was present in the minds of many delegates, particularly those with interests in the southwest Pacific.

The final paragraph of the Declaration is the only one providing any machinery. The colonial powers undertake "to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply [i.e., Trust Territories]." This provision is far from giving the United Nations Organization the authority to meddle in colonial affairs, although it is presumably intended that the reports will be made public

and can be discussed in appropriate international bodies. Certain colonial powers have published such reports in the past, but this is the first time that all of them have undertaken to do this and do it regularly. Mr. Abe Fortas, the under-secretary of the Interior and one of the advisers to the United States delegation at the Conference, made it clear, in a recent letter to Representative Bartlett of Alaska, published in the *Congressional Record* of July 19, 1945, that the Interior Department was only too glad to furnish such information, and that "the provisions of Chap. XI may fairly be said to be based upon the traditional and current policy of this Government with respect to territorial administration."

In detail, the Declaration may seem to lack novelty. As one British journal says, "It does not introduce any new or revolutionary doctrines, and to a large extent it only expresses what have been the declared aims and objects of British colonial policy for a long time. Its importance lies in the fact that all other Powers with colonial possessions have now assented to these principles. To that extent, what is called the *colonie d'exploitation* must become a thing of the past."³

II. THE TRUSTEESHIP SYSTEM

The trusteeship system is a modern adaptation of the League mandates system, with provision against some of the weaknesses of that system. Its first characteristic is that it is voluntary. The San Francisco Conference was primarily establishing machinery which *might* be used. In no part of the Charter is this clearer than in regard to trusteeship. It merely provides a "system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements." The territories to which the system may be applied are, as mentioned previously, in three categories: "a. territories now held under mandate; b. territories which may be detached from enemy states as a result of the Second World War; and c. territories voluntarily placed under the system by states responsible for their administration."

These categories, it is true, cover all the dependent areas in the world, although, in the present state of nationalist feeling, it seems unlikely that any colonial power will voluntarily put a colony of its own under the system. Conditions, however, may change, and the Charter is intended to last a long time. Category "c" need not be confined to colonies. Areas in dispute like the Dodecanese might find themselves governed in this way by decision of the Big Three or the Peace Treaty. In Committee II/4, there was no suggestion that this category might cover metropolitan areas, or even entire countries like Germany and Japan; but this was suggested by Professor Frederick L. Schuman in the *New York Times* of August 12, 1945.

³ *African World*, June 30, 1945, p. 438.

The basic objectives of the trusteeship system are elaborately stated in the Charter. International peace and security comes first; then follows the promotion of "political, economic, social, and educational advancement of the inhabitants of the trust territories and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement."

Here "independence" takes its place as one of the possible goals of a dependent people, although "self-government" is an alternative. The point was often made in Committee II/4 that independence in a dangerous world was not always practicable or desirable. Spokesmen of certain imperial powers maintained that many colonial peoples preferred dependence. British subjects, including the prime minister of New Zealand, insisted that dominion status in the British Commonwealth was far finer than independence. Perhaps Dr. Van Mook of the Netherlands expressed a wise judgment when he said that whatever the terms used in the Charter, when a people are ready for independence they will secure it—and he spoke in the presence of delegates from the Philippines, from Egypt, from Iraq, from Syria, and from the Lebanon—all of whom could look back to a recent colonial past.

Another basic objective is "to encourage respect for human rights and for fundamental freedoms for all." And a final one, cautiously stated, is "to ensure equal treatment in social, economic, and commercial matters for all members of the United Nations and their nationals." But conditions are attached to this objective, and trustee powers are not committed so specifically as in the "B" mandates for Africa.

The Administration of Trust Territories. On what terms and in what way will trust territories be administered and this administration be supervised? For each territory placed under trusteeship, a separate trusteeship agreement will be made, designating the administering authority and indicating the terms of trusteeship. Each territory will be a separate case. The possible differentiation, of a purely administrative sort, is increased by the fact that the administering authority may be "one or more states of the Organization itself." The mixed international commission, like the Saar Basin Governing Commission, whose usefulness was clearly demonstrated after World War I, although not in the colonial field, can still be used. Some uniformity in the terms of trusteeship seems intended by the final requirement that the appropriate organ of the United Nations will have to approve each trusteeship agreement before it becomes effective.

One basic differentiation within the system is the provision for two sorts of areas within trust territories—strategic and non-strategic. In the

first, the Security Council exercises such functions as the United Nations possesses in regard to trusteeship, including the authority to approve the terms of trusteeship. In the second, the General Assembly or, under its authority, the Trusteeship Council, speaks for the United Nations.

The question of a strategic area and its relation to general security is one on which the implications (though perhaps not the text) of the chapter are clear. A power which exercises trusteeship may wish to maintain a base for its own security as well as for general security, and in that case might wish to guard its secrets even from other members of the United Nations. It can do this if the other "states directly concerned" with the territory agree, and if the Security Council agrees also. Within the strategic area, the administering power has a freer hand than in the rest of the trust territory. It need not necessarily make reports nor submit to visitation, and it comes under no supervision from the General Assembly. It is bound to apply to the people of the area the same basic objectives as those applicable to non-strategic areas, and the Security Council is expected "to avail itself of the assistance of the Trusteeship Council," in looking after native welfare. From the greater detail and precision directed to a consideration of "non-strategic areas," it would seem that the Committee expected strategic areas to be a minor element in the trusteeship system.

Special interest in this country has been directed to the effect which this program will have on the disposal of the islands in the Pacific which the United States has taken from Japan, both mandated islands like Saipan and others like Okinawa. There is no legal obligation on the United States to place these islands under trusteeship, and if this is done, the terms of the trust will no doubt be satisfactory to the Government as a whole, including the War and Navy Departments. Both of these departments, in reference to the trusteeship chapters, as well as to other chapters, have expressed the opinion that "the military and strategic implications" of the Charter "as a whole are in accord with the military interests of the United States."⁴

In addition to the provisions for "strategic areas," there are also stipulations in Art. 84 that all trust territories shall play their part in the maintenance of international peace and security. For this purpose (as well as for local policing), the administering authority may create defense facilities, may raise armies, and may use them to carry out obligations undertaken towards the Security Council. Under the League system, mandated territories were expected to be demilitarized. Under the trusteeship system, the trust territories may properly become centers of military power.

Protection of Existing Rights. One of the most interesting (and one of the

⁴ Report of Senate Foreign Relations Committee (p. 5), July 16, 1945.

most hotly disputed) articles in the trusteeship chapters is Art. 80—the so-called “conservatory clause.” This clause resulted from the fears of mandatory powers lest their legal position in the mandated territories be taken away out of hand by the trusteeship system. There were also fears on the part of minority groups (such as the supporters of the Jewish people in relation to Palestine) lest their privileges under the League Covenant and the mandates should be taken away. Art. 80, therefore, states that “nothing in this chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.” This guarantee holds unless and until trusteeship agreements are made regarding the individual territories concerned. Such a guarantee seems to give to each party with a legal interest, and particularly the mandatory powers, a *liberum veto* against any change in their position. There is, therefore, added the stipulation that this guarantee shall not give grounds for delay in the making of trusteeship agreements. Vested interests might hold up the transformation of mandates into trust territories, but they are under a moral obligation not to use this stipulation indefinitely for that purpose. The Union of South Africa, however, made it clear at San Francisco that it did not intend to transform the South West African mandate into a trust agreement, since it proposed to incorporate this territory into the Union.

The Trusteeship Council. The administration of trust territories is in the hands of the administering authority. Supervision of this administration on behalf of the United Nations is, in the case of non-strategic territories, entrusted to the General Assembly and to an agency of the General Assembly established for that purpose, the Trusteeship Council. To indicate the standing of the Trusteeship Council and the importance of its work, it was created one of the principal organs of the United Nations.

The Trusteeship Council consists of members of the United Nations, each of which is to be represented in the Council by “one specially qualified person.” Each administering authority becomes *ipso facto* a member of the Council as does each of the five great powers, whether it administers a trust territory or not. The rest of the Council is elected by the General Assembly, which is to elect enough additional members so that those representing non-administering states will equal those representing administering states. This Council is given, directly, only one specific power—to draw up a questionnaire upon the basis of which each administering authority will make an annual report to the General Assembly. It is anticipated, however, that the Trusteeship Council will act as the agency of the General Assembly in carrying out the supervisory powers given to the “General Assembly and, under its authority, the Trusteeship Council” (Art. 87). These include the power to consider reports from the ad-

ministering authority, to accept and examine petitions, to provide for periodic visits to the trust territories, and to take "other actions in conformity with the terms of the trusteeship agreement." The administering authority must be appropriately consulted in all these matters. The Trusteeship Council will have a staff, provided from the Secretariat of the Organization, and it is to avail itself of the assistance of the Economic and Social Council and other "specialized agencies" of the organization. Substantive decisions of the Trusteeship Council will be taken by simple majority, of the General Assembly by a two-thirds vote, and of the Security Council by seven out of eleven votes, including the concurring votes of all the five great powers. In the mandates system, the Permanent Mandates Commission voted by simple majority, but the Council and Assembly of the League were required to act by unanimity.

Termination of Trusteeship. Will a trust territory always remain in a state of tutelage? Can it ever obtain freedom from its dependent status? Art. 78 implies one method by which trusteeship can terminate—when the trust territory is admitted as a member of the United Nations. However, no specific provision is made for the termination of trusteeship. In many cases, no doubt, the status will necessarily be long-continued. Trusteeship agreements may, however (and it is to be hoped that in appropriate cases they will), include provisions for the possible modification or termination of the trust, in the interest of the people concerned. It will be recalled that this was done in the case of certain "A" mandates under the League of Nations.

Conclusion. When the work of Committee II/4 was begun, there was grave doubt whether there would emerge from it a plan so full of constructive possibilities as the trusteeship system and a statement so full of promise for the native peoples as the Declaration. The Committee finished its work, however, in a mood of self-gratulation, and the enthusiasm communicated itself to the Commission when the Committee's report was made. These three chapters of the Charter certainly open up far-reaching possibilities for the progressive advancement of non-self-governing peoples.